

SUMMARY ANALYSIS OF AMENDED BILL

Franchise Tax Board

Author: Alarcon Analyst: Jeff Garnier Bill Number: SB 2037

Related Bills: See Prior Analysis Telephone: 845-5322 Amended Date: June 6, 2000

Attorney: Patrick Kusiak Sponsor:

SUBJECT: Sustainable Building Costs Credit

DEPARTMENT AMENDMENTS ACCEPTED. Amendments reflect suggestions of previous analysis of bill as introduced/amended _____.

AMENDMENTS IMPACT REVENUE. A new revenue estimate is provided.

AMENDMENTS DID NOT RESOLVE THE DEPARTMENT'S CONCERNS stated in the previous analysis of bill as introduced/amended _____.

FURTHER AMENDMENTS NECESSARY.

DEPARTMENT POSITION CHANGED TO _____.

REMAINDER OF PREVIOUS ANALYSIS OF BILL AS INTRODUCED/AMENDED _____ STILL APPLIES.

☒ OTHER - See comments below.

SUMMARY OF BILL

Under the Personal Income Tax Law (PITL) and the Bank and Corporation Tax Law (B&CTL), this bill would allow a credit equal to 5%, not to exceed \$1 million per project, of the sustainable building costs paid or incurred to construct, repair, maintain, rehabilitate or improve a commercial or multifamily residential structure or any combination of retail stores. The aggregate amount of credits allowed could not exceed \$20 million in any one calendar year. If credit claims exceed \$20 million in a year, the credit would then be allocated by the Tax Credit Allocation Committee (TCAC).

SUMMARY OF AMENDMENTS

The June 6, 2000, amendments removed the term "environmental building costs" and definitions thereof, and replaced it with "sustainable building costs." The Environmental Protection Agency was removed as the primary agency responsible for determining if building costs were energy efficient or environmentally sound. The California Integrated Waste Management Board (CIWMB), in consultation with other state agencies, was named to develop the environmental performance standards that would be used to determine if costs incurred were sustainable building costs.

The amendments also increased the annual limitation from \$15 million to \$20 million and delayed the operative date of the credit to January 1, 2002.

The background information of the prior analysis, dated April 4, 2000, still applies. The remainder of the April 4, 2000, analysis is being replaced with this analysis.

Board Position:

<input type="checkbox"/> S	<input type="checkbox"/> NA	<input type="checkbox"/> NP
<input type="checkbox"/> SA	<input type="checkbox"/> O	<input type="checkbox"/> NAR
<input type="checkbox"/> N	<input type="checkbox"/> OUA	<input checked="" type="checkbox"/> PENDING

Legislative Director

Date

Johnnie Lou Rosas

7/6/00

EFFECTIVE DATE

As a tax levy, this bill would become effective immediately upon enactment and would apply to taxable and income years beginning on or after January 1, 2002, and before January 1, 2007.

SPECIFIC FINDINGS

This bill would allow a credit equal to 5%, not to exceed \$1 million per project, of the cost of sustainable building costs paid or incurred to construct, repair, maintain, rehabilitate or improve a commercial or multifamily residential structure or structures that are at least 20,000 square feet in size. Additionally, any combination of retail stores constructed by one company in California within one calendar year totaling at least 20,000 square feet could qualify for the credit. A "project" would be defined as a single structure or a group of essentially identical structures totaling 20,000 square feet or more.

A sustainable building is defined as a building that meets "environmental performance standards" in all of the following areas:

- ?? Energy efficiency and air emissions.
- ?? Indoor air and environmental quality.
- ?? Materials efficiency and natural resource management.
- ?? Water efficiency.
- ?? Siting and landscaping.

The "environmental performance standards" would be developed by July 1, 2001, by the CIWMB, in consultation with the State Air Resources Board, Department of Finance, State Department of Health Services, Department of Housing and Community Development, Department of Water Resources, and the California Energy Resources Conservation and Development Commission. In developing the performance standards, the CIWMB and the other state agencies would be required to conduct workshops to solicit input from various groups for developing the sustainable building performance standards. The bill would allow CIWMB to adopt emergency regulations to define these standards.

This bill would allow up to \$20 million in credits for sustainable building costs in any one calendar year. In the event that more than \$20 million of valid credits are claimed in any one year, TCAC would be allowed to allocate up to the \$20 million limit. The allocation would be based on TCAC's determination of which claimants' environmental building costs incurred would result in the greatest proportionate increases in environmental soundness and energy efficiency. TCAC would be required to promulgate regulations governing the implementation of TCAC's duties regarding the allocation of this credit.

This bill would allow any unused credit in excess of the taxpayer's tax liability to be carried over to future years until exhausted.

Policy Considerations

This bill would allow taxpayers in certain circumstances to claim multiple special tax credits for the same item of expense (e.g., Manufacturers' Investment, Enterprise Zone and Targeted Tax Area Credits).

In the case of buildings being used in a trade or business, this bill would not require the basis of the building or the amount of the current expense (if currently deductible) to be reduced by the amount of the credit.

Conflicting tax policies come into play whenever a credit is provided for an item for which preferential treatment is already allowed in the form of an expense deduction or future depreciation deduction. This new credit would provide a double benefit for these items. On the other hand, making an adjustment to reduce the basis or expense in order to eliminate the double benefit creates a state and federal difference, which is contrary to the state's general conformity policy. In the case of a one-time expense deduction, the reduction of that expense would not create an ongoing difference. However, if the expenditure must be capitalized, then an ongoing difference would be created.

The bill does not require the building to meet the environmental performance standards for any minimum amount of time to qualify for the credit. Without this requirement, a taxpayer could sell the building component to another taxpayer, who could also qualify for the credit.

Implementation Considerations

This bill would only require TCAC to allocate the credit after taxpayers file returns claiming the credit and only if the aggregate amount of credits claimed for a calendar year exceeds \$20 million. To determine whether TCAC allocation would be required, the department would have to hold all returns claiming the sustainable building costs credit. The department would be required to pay interest on any refund not mailed to a taxpayer within 45 days of the return's filing date. Additionally, under present law, a taxpayer could file an amended return, up to four years after the original due date of the return, claiming the credit.

In addition, the \$20 million annual limitation is expressed in terms of a calendar year, which makes it unclear how it would be applied in the context of fiscal year filers.

Generally, allocation or pre-certification of credits is done prior to the filing of tax returns claiming that credit. It would be easier for the department to administer this credit if TCAC were required to pre-certify or allocate this credit prior to **any** taxpayer being entitled to claim the credit.

This bill would allow an unlimited carryover for the sustainable building cost credit. Recently enacted credits have contained a limited carryover since credits typically are exhausted within eight years.

The term "project" is incompletely defined and the term "one company" is not defined. In order to avoid confusion complete definitions are needed.

Department staff is available to assist in resolving the above or any other concern.

FISCAL IMPACT

Departmental Costs

Once the Implementation Consideration is resolved, this bill would not significantly increase the department's costs.

Tax Revenue Estimate

The revenue losses under the B&CT and PIT laws are estimated to be as follows:

Revenue Impact of SB 2037			
For Taxable Year Beginning After 1/1/2002			
Assumed Enactment After 6/30/2000			
Fiscal Years			
(In Millions)			
2000-1	2001-2	2002-3	2003-4
\$0	\$0	\$20	\$20

This analysis does not consider the possible changes in employment, personal income, or gross state product that could result from this proposal.

Tax Revenue Discussion

Revised revenue losses above reflect a reduction of \$1 million for fiscal year 2000-1, \$15 million for 2001-2 and an increase of \$5 million for 2002-3 and thereafter from the previous version of this bill as amended April 4, 2000. The revised revenue losses are attributable to increasing the aggregate credit amount that can be allocated from \$15 million to \$20 million for any calendar year and changing the effective date of the credit (from taxable and income years beginning on or after January 1, 2001 to taxable and income years beginning on or after January 1, 2002).

BOARD POSITION

Pending.